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File No. O Railways/49

Legal DEPARTMENT

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Subject:—

opinions under the Indian Railways Act,

1890

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C O N T E N T S.

Legal Department File No. O.Railways/1949.

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ndian Railways Act.1890 Sec.12.

Construction of a footpath by the Railway Bridge over the Kanai Nandi.

Since the bridge over the Kanai Khandi is not an accommodation work, the construction of foot path over the bridge would not be "further accommodation work" within the meaning of section 12 of the Indxian Railways Act, 1890. Consequently the railway authority cannot be compelled to provide a footpath over the bridge. There appears, therefore, no other alternative but to accept the proposal of the General Manager, B.B.& C.I.Railway and to ask him to provide the footpath at Government cost.

Id/- P.M.L.
4/3

Remembrancer of Legal Affairs.

U.R. to P.W.D.No.2598 dated 7th March 1949.

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Indian Railways Act 1890
Section 72 & 77

Indian Contract Act, 1872.
Sections 152 & 161

It appears that a steam roller was despatched by the Sub-Divisional Officer, Dapuri Workshop Sub-division, after repairs from Poona to Karad railway station for Sub-Divisional Officer, Karad, and it was damaged while it was being unloaded by the railway crane at the Karad railway station. The damage was caused by the wrong linking of the chains of the crane which was directly linked with the fork instead of passing through the front wheel. A notice was served on the Secretary to the Government of India, Railway Department, under section 77 of the Indian Railways Act, 1890, for making good the loss. The Railway authorities have, however, denied their liability on the ground that the damage to the roller was due to an old flaw in the metal and the sender having executed the risk notes 'A' and 'B' the Railway authorities were absolved from all liability for the damage to the roller unless the damage arising therefrom was due to the misconduct on the part of the railway servants. The R.L.A is requested to advise whether Government can claim damages from the Railway authorities on account off the alleged wrong handling of the roller which was sent after signing risk notes 'A' and 'B'.

It is true that under sub-section (1) of section 72 of the Indain Railway Act, 1890, the responsibility of the Railway administration for the loss, destruction or deterioration of animals or goods delivered to the Administration to be carried by railway shall, subject to the other previsions of this Act, be that of a bailee under section 152 and 161 of the Indian Contract Act, 1872, but under sub-section (2) this liability can be limited by an agreement in writing. In the present case admittedly risk notes ~~and~~ 'A' and 'B' were executed with the result

that.....

that the liability of the Railway to make good the loss would arise only if it can be proved that there was misconduct on the part of the railway servants in unloading the roller. In 54 Bom. 105, Kemp C.J.held that in the absence of proof that there was any breach of duty by the railway servants or any infringement of the rules which regulate their terms of employment, no fair inference of misconduct on thepart of the railway administration's servants could properly arise. Under the exception to Rule 22 of the Rules framed by the M. & S.M.Railway, heavy machinery, long timber or xxxxxxx other heavy articles weighing one ton and over per piece, unless otherwise provided, are required to be loaded and unloaded by the senders and consignees respectively. Rule 27 provides that in all cases where the owners of goods are required to do thea loading and unlodding, as the case mayx be, the risks attending these operations shall be borne by the ownexs. It appears from these rules that the consignee of the foller in the prdsent case was primarily liable for unloading it and the risk attending such unloading was to be brone by theowner. If the railway servants were xxxxxemployed by the consignee for unleading the roller, it would not mean that the consignee could shift the risk on to therailway for the misconduct of its servants if any. Besides, "misconduct" implies some wilful neglect. The fact that the roller was damaged by the wrong linking of thechain of the crane may be due to misjudgment of the railway servants and it would not amount to misconduct. In the circumstance it appears that no damages can be claimed from the railway authorities.

Id/- xxxxx P.M.L.
Remembrancer of Legal Affairs. 5/10

I.R. to P.W.D.,No.11203, dated the 7th October 1949.

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